

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Julius Robson et al.	§	Art Unit:	2617
		§		
Serial No.:	10/718,412	§		
		§	Examiner:	Un C. Cho
Filed:	November 19, 2003	§		
		§		
For:	Method of Resource	§	Atty. Dkt. No.:	16125IDUS01U
	Allocation in a Multiple	§		(NRT.0215US)
	Access Wireless	§		
	Communications Network	§		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

ALLOWABLE SUBJECT MATTER

Applicant acknowledges the indication that claims 6, 33-35, and 39 have been allowed, and that claims 2, 16, and 25 were objected to but were indicated as containing allowable subject matter.

CLAIM OBJECTION

Dependent claims were objected to based on usage of the article "A" rather than "The." It is respectfully submitted that either option is proper. 37 C.F.R. § 1.75(c) specifies that a dependent claim should refer back to another claim in the same application. The dependent claims of the present application clearly refer back to another claim of the same application; therefore, the dependent claims of the present application are in proper form. Withdrawal of the claim objection is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103

Independent claim 1 was erroneously rejected as being obvious over alleged “admitted prior art” (APA) in view of Sato.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as held by the U.S. Supreme Court, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

The Office Action conceded that APA does not disclose the following feature of claim 1: “establishing a number of resource units making up a fixed allocation of resource units, **said fixed allocation of units being the same for all user equipments of the network.**” 07/19/2009 Office Action at 3-4. Instead, the Office Action cited Sato as purportedly disclosing this claim feature missing from APA. Specifically, the Office Action cited Table 6 on pages 7-8 of Sato. *Id.* at 4.

Note that Table 6 of Sato refers to allocations of various control channels, including a Pilot channel, Sync channel, Paging channel, and Access channel, to different **sectors** of a cell (**sectors** A, B, C). The control channel allocation to sectors depends on the number of base band signal processing blocks disposed (Sato, ¶ [0112]), where the base band signal processing blocks are disposed in a base station (*see* Fig. 5 of Sato, and ¶ [0004]). Thus, Table 6 describes allocating a number of channels to **sectors** that depend upon base band signal processing blocks within **a base station**. This teaching of Sato has absolutely nothing to do with a fixed allocation of resource units being the **same** for **all user equipments** of the network.

As specifically taught by Sato, one of its objects is to decrease the number of control channels to be set when the number of baseband signal processing blocks (within a base station) disposed is small or when the number of available baseband signal processing blocks decreases due to a system failure. *Id.*, ¶ [0020]. Another object of Sato is to reallocate control channels which have been allocated to a base band signal processing block (within a base station) which is not disposed, or cannot be used due to a system failure, to another available base band signal processing block (within a base station) so that the processing capability is not exceeded, and

load is distributed. *Id.*, ¶ [0021]. The allocation of control channels to base band signal processing blocks of a base station has absolutely nothing to do with the following elements of claim 1:

- establishing a number of resource units making up a fixed allocation of resource units, said fixed allocation of resource units being the same for all **user equipments** of the network;
- **allocating** the fixed allocation of resource units **to** each child **user equipment** in the partition.

The Response to Arguments section of the Final Office Action stated that Applicant appears to be reading limitations from the specification into the claims. 07/19/2010 Office Action at 2. Specifically, the Office Action argued that Applicant is adopting a narrow interpretation of “resource units” as recited in the claim. It is respectfully submitted that the dispute is not on the interpretation of “resource units.” The dispute is rather focused on the language in claim 1 relating to allocating the fixed allocation of resource units **to each child user equipment** in the partition. In Sato, the allocation of access channels, identified by the Office Action as constituting the fixed allocation of resource units recited in claim 1 (07/19/2010 Office Action at 4), is to a sector. Allocating access channels to a sector is different from allocating the fixed allocation of resource units **to** each child user equipment.

Thus, it is respectfully submitted that even if APA and Sato could be hypothetically combined, the hypothetical combination of the references would not have led to the claimed subject matter.

Moreover, it is respectfully submitted that a person of ordinary skill in the art would not have been prompted to combine the teachings of APA and Sato to achieve the claimed invention. As the U.S. Supreme Court has held, it is **important** to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR*, 127 S. Ct. at 1741. As specifically taught by the APA, “the number of resource units allocated to a child user equipment is dependent on the number of other child user equipments in that partition and so the number of resource units allocated to the child user equipments varies from partition to partition.” Specification, p. 2, lines 7-10 (emphasis added). Thus, APA specifically **teaches away** from the invention, since APA teaches that a conventional technique allocates different numbers of resource units to different child user equipments between different partitions, based on the number of child user equipments present in

the partition. APA specifically would have led a person of ordinary skill in the art away from providing a **fixed** allocation of resource units that is the **same** for **all** user equipments of the network.

Moreover, as explained above, Sato teaches subject matter that is significantly different from the subject matter of claim 1; namely, Sato refers to allocation of control channels **to sectors** depending upon base band signal processing blocks in a base station, which has nothing to do with allocating the fixed allocation of resource units to **user equipments** of the network.

Thus, in view of the foregoing, it is clear that a person of ordinary skill in the art would not have been prompted to combine the teachings of APA and Sato to achieve the subject matter of claim 1. The obviousness rejection of claim 1 and its dependent claims over APA and Sato is therefore clearly defective.

Similarly, the obviousness rejection of independent claims 15, 24, 37, and 38 and respective dependent claims over APA and Sato is also defective.

Independent claim 36 was rejected as purportedly obvious over APA, Sato, and Ben-Eli. The rejection of claim 36 is erroneous for at least the reason that Sato was mis-applied as purportedly disclosing the fixed allocation of resource units being the same for all user equipments of the network as recited in claim 36, for reasons similar to those stated above. Ben-Eli was cited by the Office Action as purportedly disclosing allocating remaining resource units among child user equipments by prioritizing user equipments having a high gain link. However, Ben-Eli does not disclose a fixed allocation of resource units being the same for all user equipments of the network.

Therefore, even if the references could be hypothetically combined, the hypothetical combination of the references would not have led to the subject matter of claim 36. Moreover, no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of APA, Sato, and Ben-Eli to achieve the claimed subject matter.

Independent claim 40 is similarly allowable over APA, Sato, and Ben-Eli.

Dependent claims are allowable for at least the same reasons as corresponding base claims.

In view of the foregoing, it is respectfully requested that the final rejections of the claims be withdrawn. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 14-1315 (16125IDUS01U).

Respectfully submitted,

Date: October 19, 2010

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